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HUMAN RIGHTS COMMITTEE

Sixtieth session

SUMMARY RECORD OF THE 1605th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 25 July 1997, at 10 a.m.

Chairman: Mrs. MEDINA QUIROGA

later: Mrs. CHANET

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of India (CCPR/C/76/Add.6; CCPR/C/59/Q/IND/4) (continued)

1. At the invitation of the Chairman, the members of the delegation of India again took places at the Committee table.

2. Mr. DESAI (India), continuing his replies to oral questions in connection with part I of the list of issues (CCPR/C/59/Q/IND/4), said that in accordance with the position taken by his Government at the time of accession to the Covenant, clauses (3) to (7) of article 22 of the Constitution would prevail in matters of pre-trial detention. However, that reservation could not be deemed as violating any provision of the Covenant. It was true that pre-trial detention could be ordered under the National Security Act on the grounds of "subjective satisfaction" on the part of the detaining authorities, but the Supreme Court had ruled that those grounds must be substantiated. Moreover, the Advisory Boards that could be set up under section 9 of the Act, which were themselves composed of practising or former High Court judges and whose independence could hardly be challenged, were empowered to make objective assessments and to determine whether or not sufficient cause had been demonstrated. That provision was surely a powerful safeguard against arbitrary detention.

3. The measures for which provision was made by the Armed Forces (Special Powers) Act and the National Security Act could in no way be described as "emergency" measures for the purposes of article 4 of the Covenant: states of emergency were entirely governed by the provisions of article 352 of the Constitution, which had not been applied since 1979. Were a state of emergency to be proclaimed, article 21 of the Constitution, concerning the protection of life and personal liberty, contained a whole series of rights that could not be derogated from.

4. In reply to Mr. Buergenthal, who had asked when the Supreme Court would address the claim that the Armed Forces (Special Powers) Act was unconstitutional, he said he believed that the hearing would take place within a matter of weeks.

5. Mr. GUPTA (India), replying to other questions, said that the Restricted Areas Permit Act was certainly not a deliberate means of denying access, by NGOs and others, to certain areas in the north-eastern states where operations under the Armed Forces (Special Powers) Act were under way. It was an independent piece of legislation designed to regulate entry into sensitive border regions; in fact, steps were currently being taken to decentralize and facilitate the procedures whereby permits could be obtained, even by tourists.

6. On the question of the plea by the Union of India before the High Court to the effect that a commission of inquiry could not be appointed by a state government, he recalled that respective spheres of jurisdiction resulted from the sharing of legislative and executive powers between the central government

and the different states. According to the Commissions of Inquiry Act, such bodies could be set up by the "appropriate" government which - depending on the issue - could be that of the Union or of a state. In the case at issue, the armed forces of the Union had been involved, allegations had been made and denied, and jurisdiction was, in fact, the subject of just one of several pleadings lodged by the Union.

7. In reply to another question relating to an incident in which members of a CRPF security picket were alleged to have fired indiscriminately, killing and injuring several civilians, in retaliation for an attack that had left one of their own number injured, he said that the state government concerned had accepted the recommendations of the commission of inquiry. The Central Bureau of Investigation (CBI) had been instructed to look further into the matter; as interim measures, financial compensation had been awarded to the victims or their relatives and some of the security personnel involved had been sanctioned.

8. One member of the Committee had asked about the killing of a "Mrs. Devi". It was difficult to furnish a reply, since in India that was a common name and insufficient to identify the case alluded to.

9. Concerning what his delegation had understood to be a question on the prolonged nature of proceedings in commissions of inquiry, notably in Andhra Pradesh, he had established that an incident involving the killing of eight scheduled-caste persons by high-caste persons had occurred in August 1991. The recommendations by the commission of inquiry had been accepted and implemented without what would appear to be undue delay.

10. As to the killing in May 1996, in Assam, of a prominent editor of a daily newspaper, he confirmed that notwithstanding the accusations of negligence on the part of the government that had been made by a human rights organization, the CBI was working on the case. An abduction and killing in Jammu and Kashmir in March 1996, also mentioned by a Committee member, and in which members of the Union security forces were said to have been involved, was also being investigated by a special team instructed by, and ordered to report solely to, the High Court. He understood that the inquiries were nearly complete.

11. In reply to the remarks concerning police opening fire in Bombay a few days earlier, he reiterated that the use of weapons by the police and security forces was the subject in every state of detailed guidelines and instructions, the substance of which had been summarized for circulation to members of the Committee.

12. He vigorously refuted the fairly widespread allegations by human rights organizations and others that, in Jammu and Kashmir in particular, paramilitary forces were in some way sponsored or encouraged by the State. Nor could there be any possible condoning of extrajudicial killings and other unacceptable behaviour by such forces. The instructions of the Government were unequivocal: activities of that nature were criminal, and must be treated as such. On the other hand, the Government was implementing an active policy of encouraging persons who had earlier used weapons to re-enter the mainstream of democratic processes; there were signs that the policy was

beginning to bear fruit, in Jammu and Kashmir and elsewhere. Thus there was indeed a multifaceted approach to the problems of the disturbed areas, going beyond security-focused interventions to politically meaningful initiatives.

13. Lastly, in response to questions on deaths in custody, as reported by Amnesty International, he said that in the past attempts had indeed been made to elucidate such incidents, and the findings had been published. As Committee members would see from its report, the National Human Rights Commission had, since 1993, called for reports by district magistrates, within 24 hours, on any incidents involving custodial violence; in the absence of such reports, there was a presumption of attempted suppression. That the number of such reports had subsequently risen was perhaps less an indication of increased violence than a sign that the policy of greater accountability was producing results. The video-filming of all post-mortem examinations, also called for by the Commission and already agreed to by 13 states, was another example of the non-punitive measures that were gradually being introduced.

14. Mr. KRISHAN SINGH (India), pursuing the argument that political measures were required to solve the problems faced in some parts of the country, said it was readily acknowledged that force alone could not provide the answers. He listed some of the non-punitive, confidence-building measures that had been taken, with the active encouragement of successive Prime Ministers. At the same time, large-scale terrorism, whether targeted or carried out at random, remained a very present phenomenon that must be energetically combated, albeit with full observance of human rights standards at all times. Those who indulged in wanton abuse of those rights could not escape accountability for their actions; the rule of law must also apply to them and ways must be found that went beyond mere condemnation. In earnestly calling on the Committee to take cognizance of acts of terror perpetrated by heavily armed individuals or groups who engaged in massive abuses of human rights, his delegation was also seeking an answer to one straightforward question. When citizens were ruthlessly killed, or bombed, or taken hostage, how should a democratic and open society based on the rule of law and its Government react?

15. Mr. DESAI (India) provided further details of the functioning of the National Human Rights Commission, which had shown itself to be not only an admirable institution (already emulated by the creation of similar bodies in six states), but also a credible and - despite the largely recommendatory nature of its pronouncements - powerful body. The fact that it received as many as 4,000 complaints each month was not a reflection of an increase in human rights abuses, but showed, that what he called "legal literacy" was taking root in the population. That, too, was a momentous development.

16. Mrs. Chanet took the Chair.

17. Mr. KRISHAN SINGH (India), expanding on a statement of the previous day, confirmed that India would very shortly become a signatory to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The procedural details were being finalized, and ratification would follow in due course.

18. Turning to matters relating to the family, he said it was felt that the desirable goal of a common civil code should be achieved through consensus-building and the creation of the necessary support for social implementation; nothing should be done that would be counter-productive to the unity and integrity of the nation. He referred to some recent findings of the Supreme Court that favoured such a gradualist approach.

19. In response to a question on inheritance laws, he pointed out that although the Hindu Succession Act of 1956 had converted the limited estate previously inherited by women into an absolute estate, the concept of "coparcenary property" had been retained. Women could not become the member of such "coparcenary". That concept had, however, been abolished in certain states, and women had been introduced as members of "coparcenaries" in Andhra Pradesh.

20. He provided more information on the activities of the National Commission for Women, which had counterparts in a number of states. Among other things, the Commission had been active on behalf of women in the domain of non-organized labour; it had advised the Government in the matter of maternity benefits; it had examined the handling of women's issues in government departments and ministries; and it had visited jails to study the problems of women prisoners. It had also undertaken a special study on the impact of the new economic policies on women and examined related issues. It had established an expert group to examine laws which might contain discriminatory provisions against women.

21. In reply to the question on certain provisions of the Immoral Traffic Prevention Act, he said that the Government itself felt the need to review the existing law and the National Commission for Women was examining a report on the matter prepared by the National Law School of India. The Commission had also been asked to comment on two bills designed to prohibit immoral trafficking in women and children and to confer rights on social workers with a view to preventing sexual exploitation and protecting health and hygiene.

22. On the subject of the declining sex ratio in India, he said that the figure of 972 females per 1,000 males in 1901 had remained more or less steady over the eight decades, but now stood at 927:1000. That could be attributed mainly to higher female mortality in all age groups. The sex ratio for women should, however, be seen against other indicators of falling mortality rates for both men and women, higher child survival rates and the improvement of life expectancy, which was more significant for women than for men. Among the factors that remained to be resolved, however, was the persistent preference for the male child. The spread of sex determination technology was a matter of serious concern, but despite the anxiety expressed on the subject, foeticide and infanticide could not be seen as major contributors to the adverse ratio. Rather, invidious discrimination in access to nutrition and health facilities was the major culprit.

23. Replying to questions concerning violence against women, including dowry-related violence, he said that in most states dowry deaths had been declining in number. With the active encouragement of central Government, many states had set up cells within the police force dealing specifically

with crime against women, and attempts were being made to attach counselling units to those cells. In order to improve the sensitivity of the police and encourage women to come forward and lodge complaints, women's police stations were also being established. Affirmative action measures and literacy campaigns were expected to contribute to that trend.

24. Concern had been expressed by the Committee members about cases of rape, and in particular custodial rape. Supplementary information would be provided, but it should be noted that in many cases higher courts had held that the fact that a woman was of easy virtue did not entitle anybody to invade her privacy.

25. Concern had also been expressed about the education gap between men and women. Female literacy was of crucial importance in answering many of India's problems; proof of that fact could be found in the State of Kerala, where female literacy was particularly high. The Government's Total Literacy Campaign had a special focus on women: 62 per cent of adults enrolled in the programme (70 million people) were women, and so far 46 million adult women had been made literate as a result of the campaign. Female literacy activists had turned the literacy campaigns in many areas into virtual women's movements.

26. Replying to a number of questions concerning the National Commission for Scheduled Castes and Tribes, he said that unlike other national institutions which were statutory bodies, it had been created by the Constitution (Sixty-fifth Amendment) Act (1990). It consisted of a chairman, a vice-chairman and five members appointed by the President. Its duties were to investigate and monitor all matters relating to the safeguards provided for the scheduled castes and tribes under the Constitution or under any other law; to inquire into specific complaints with respect to deprivation of their rights and safeguards; to participate and advise on the planning of their socio-economic development and to evaluate the progress of that development under the Union and in any particular state; to present to the President annually, and at such other times as the Commission might deem fit, reports on the working of the safeguards; to make recommendations in those reports as to the measures that should be taken by the Union or by any state for the effective implementation of the safeguards and other measures for the protection, welfare and socio-economic development of the scheduled castes and tribes; and to discharge such other functions in relation to their protection, welfare, development and advancement as the President might specify.

27. The President caused the annual report of the National Commission to be laid before each House of Parliament, along with a memorandum explaining the action taken or proposed on the recommendations relating to the Union and the reasons for their non-acceptance, if any. Where a report or part of a report related to any matter with which a state government was concerned, a copy was forwarded to the governor of the state, who placed it before the state legislature. The Union Government and every state government was required to consult the Commission on all major policy matters affecting scheduled castes and tribes.

28. As for the percentage representation in the senior ranks of government, he said the Constitution currently stipulated that the provisions for reservation of seats in the Lower House of Parliament and state legislatures in proportion to the population of scheduled castes and tribes should remain in effect until the year 2000. The practical impact of the provisions had been that ministers from the communities concerned had been a part of virtually every central Government formed and in the states. Currently, the President of India, the Chief Minister of the most populous State, Uttar Pradesh, and the Speaker of the Lower House of Parliament came from scheduled castes or tribes.

29. The Ministry of Welfare acted as the nodal agency for overall policy, planning and coordination of programmes for the economic and social development of members of those communities, and most states and Union Territories had departments looking after their welfare, which were invariably headed by a minister from the communities concerned.

30. In the top grades of the civil service the representation of scheduled caste communities had increased between 1957 and 1995 from 0.71 per cent to 10.16 per cent, and of the scheduled tribe communities from 0.1 per cent to 2.9 per cent. According to the 1991 census, the corresponding proportions of the total population were 16.48 per cent and 8.08 per cent, so the representation of both communities clearly needed to be increased in the upper ranks of the civil service, and the Government had initiated a number of measures to achieve that. They included a relaxation of five years in the upper age limit for entry; a relaxation in the standards of suitability for selection, provided the candidates were not unfit for the posts; a relaxation of the experience qualification in the case of direct recruitment and exemption from payment of application fees. Vacancies reserved for scheduled castes and tribes in direct recruitment which remained unfilled were to be carried forward as such without any de-reservation. Also, special recruitment drives were conducted to fill any backlog of vacancies. To ensure implementation of the reservation orders, liaison officers had been appointed in each department, and recruiting authorities were required to submit annual statements for government scrutiny.

31. One member had observed an apparent dramatic increase in the number of atrocities reported to the National Commission for Scheduled Castes and Tribes. It had probably been due to an increased awareness of the Commission's existence rather than to any change in the social situation, but any practice of untouchability and any atrocity committed against members of the communities concerned were viewed extremely seriously and action was taken to bring the guilty to justice. Special legislation had extended the concept of positive discrimination to the field of criminal law inasmuch as it prescribed penalties which were more stringent than for corresponding offences under the Penal Code and other laws. In 1995 comprehensive rules had been laid down to enhance relief and rehabilitation. Exclusive special courts had been set up in a number of states to try offences under the special legislation, and they had proved to be more effective in providing speedy justice than the regular courts.

32. There had also been questions about the way India's experiments in decentralization had affected the interests of scheduled castes and tribes.

Some 22.5 per cent of seats in all local bodies were reserved for representatives of those communities, ensuring them an effective and guaranteed role in decision-making at grass-roots level. That should be seen in the context of the Parliament's landmark constitutional amendment by which the basic unit of governance in tribal areas would be an assembly of adults in the village community.

33. A question had been asked as to whether caste itself should not be abolished. There were no demands from society at large for that to be done, and one of the most important phenomena in the Indian political scene was the fact that caste was proving to be a powerful weapon of empowerment for vulnerable communities which were organizing themselves politically. Such empowerment was the surest means to promote effectively the enjoyment by scheduled castes and tribes of all their constitutional and civil rights, and to put an end to all vestiges of social prejudice.

34. Replying to questions on child labour, he said that according to a detailed government survey carried out in 1987-1988 there had been some 17 million working children, around 2 million of whom were engaged in hazardous work, such as the match-making industry, the fireworks industry, the glass industry and mining. Fresh surveys were being carried out. Indian laws and programmes were consistent with ILO resolutions calling for the progressive elimination of child labour, starting with its most intolerable and exploitative forms.

35. The root causes of child labour in India were extreme poverty, parental illiteracy and parental unemployment. No element of religion was involved. Children were regarded as supplementary income-earners, and parents tended to place a lesser premium on the long-term benefits of educating their children. The fact that children could not articulate their rights and needs as effectively as adults also contributed to their exploitation. Approximately 90 per cent of child labour was in agriculture and allied work in rural areas.

36. The prevalence of the root causes could not be an excuse to condone the exploitation of children, and that was why the Government's Common Minimum Programme called for the elimination of child labour in all its forms, and not just in hazardous work. It also called for making free and compulsory education up to the age of 14 a fundamental right. While the ideal situation would be a law requiring all parents to send their children to school and not to work, the experience in 14 states which had enacted laws relating to compulsory primary education showed that socio-economic and other factors, as well as the size of the resources required, might make it difficult for such laws to be enforced. For that reason the Government believed that the long-term solution lay in eliminating the root causes that gave rise to child labour. The problem must be addressed as part of policies and programmes for economic and social development. Legislation and administrative measures were important, but so was effective implementation, and government efforts needed to be supplemented by those of all actors in civil society, including employers and NGOs.

37. Another question had concerned the maintenance of birth registers. Registration of all births had been made compulsory and free of charge if

reported within a period varying from 14 to 21 days in different parts of the country. There were also provisions for delayed registration. Registration of births was almost 100 per cent in six states and three Union Territories. Efforts were being made to create an awareness of the benefits arising from universal birth registration.

38. Turning to questions concerning child prostitution, he assured members of the Committee that the natural initial response of denying that there was such a problem was past: the issue was now being debated openly. Various suggestions were being considered, involving concerted action by the police, NGOs and governments, stricter enforcement, a statutory board to prevent trafficking, media campaigns, and free and compulsory education for children. There would also have to be global measures to combat the menace of sex tourism. Little information was currently available on inter-State trafficking but a survey had shown that 94.6 per cent of child prostitutes were Indian, 2.6 per cent were Nepalese and 2.7 per cent were Bangladeshis.

39. Information had also been requested concerning the system of devdasis and yognis, which was the practice under which girls were dedicated to a temple deity. The practice had existed historically as a socially sanctioned form of exploitation, particularly in disadvantaged economic groups in Karnataka, Maharashtra and Andhra Pradesh. It was a social evil, and some states had laws prohibiting it, but the problem was rooted in traditional, social and economic relations and required intervention through legal measures, the imparting of skills and education, and the creation of employment opportunities. Emphasis was being placed on a more active role for NGOs in providing preventive and rehabilitative services for devdasis and their children.

40. The legal age for marriage in India was 18 for women and 21 for men. Legal enactments had varying definitions of a child in terms of age, depending on the purpose of the legislation in question. The matter of differential ages had been referred to the Law Commission of India, which was undertaking a comprehensive review of the country's penal laws.

41. Replying to questions about bonded labour law, he said that 80 per cent of bonded labourers were engaged in agricultural activities, and the rest worked in such areas as stone quarries and brick kilns. Over the country as a whole some 61.5 per cent of bonded labourers were from the scheduled castes. NGOs had done commendable work in identifying and rehabilitating bonded labour, and there was a proposal for central assistance to those NGOs. The Supreme Court had appointed an NGO assisted by an independent advocate as a Commissioner of the Court for each of the 13 states where there were reports of bonded labour to verify the claims of the state governments that they did not have bonded labour. Most states had submitted affidavits to the Supreme Court, but some had asked for more time to complete their surveys. It was the responsibility of the state government to identify bonded labour; central Government did not have a field agency of its own to undertake surveys and rely on data provided by the state government. The latter might have reason to understate the case, but the discrepancy between its figures and those of some NGOs might be due to different definitions of bonded labour. Its

identification was a continuing exercise which required constant vigilance and timely corrective action, so the involvement of grass-roots organizations was essential.

42. The law provided for the prosecution of offenders, but some states had expressed the view that too strict an approach to prosecution might be counter-productive for the purposes of speedy identification. Central Government attached importance to both identification and prosecution, and that had been strongly impressed upon all state governments. One prominent social activist had proposed that central Government should set up a national authority on bonded labour, which might be able to take more concerted action.

43. Mrs. MEDINA QUIROGA, noting that the number of devdasis had been acknowledged to be large in some areas but that there was no central law to prohibit the practice because it was considered to be a localized problem, asked whether India had considered the possibility of dealing with it at the federal level. At present it was left to the individual states, some though presumably not all of which had enacted their own laws. She asked whether India agreed that the devdasis question was a major human rights issue of such magnitude that it needed federal State intervention.

44. Mr. KLEIN asked whether the guidelines regarding the use of force were merely executive instructions or whether their violation by the police resulted in disciplinary measures or criminal proceedings. He also noted that he had received no answer to his question about the practice of the blinding of children.

45. Mr. POCAR said it was his understanding that in 1978 the Indian Parliament had adopted an amendment to clauses (4) to (7) of article 22 of the Constitution but that that amendment had not yet come into force. He wondered why that was.

46. Mr. DESAI (India) said that the delegation would prefer to reply to those questions at a later date.

47. The CHAIRMAN invited the delegation of India to answer the questions contained in part II of the list of issues (CCPR/C/59/Q/IND/4).

48. Mr. DESAI (India), answering question 10 regarding the death penalty, said that it was imposed in India only in what the Supreme Court referred to as the "rarest of rare cases", when the crime was so heinous that it would shock the conscience of society. Unlike many systems of law where the death penalty was compulsory, in India it was an option which was given to the judge trying a case. It was a compulsory punishment only in the very rare case of a person serving life imprisonment who committed murder while in prison. If a judge decided that the case was one of those "rarest of rare cases" and passed sentence of death, the matter was automatically transmitted to the High Court of the state concerned. In other words, the sentence was automatically taken to the appeal stage. And it was no ordinary appeal because the High Court had to sit and scrutinize the whole evidence de novo. If the sentence of death was then confirmed by the High Court, the matter could always be taken to the Supreme Court. In any event, article 72 of the Constitution permitted a person who had been sentenced to death to approach the President of India

with a petition for mercy. Even when death sentences were imposed they were normally not carried out. In 1991, 24 sentences of capital punishment had been imposed, only four of which had been carried out. In 1992, six death sentences had been carried out; in 1993 the figure had been four, in 1994 one, and in 1995 two. The President of India had intervened in 75 to 80 per cent of cases.

49. Section 22 of the Juvenile Justice Act (1986) stated that no juvenile delinquent could be sentenced to death. A juvenile was defined as a boy who had not attained the age of 16 years and a girl who had not attained the age of 18. Technically, therefore, there was a grey area in that a boy aged between 16 and 18 years could be sentenced to death, but there had been no such case and the Supreme Court had pronounced in 1977 that no person under the age of 18 should be sentenced to capital punishment. That was a judge-made law, but under article 141 of the Constitution it was binding on all courts and, as far as they were concerned, was as good as a law made by the legislature.

50. The Law Commission of India was currently studying the definition of a child, and India's first periodic report under the Convention on the Rights of the Child had discussed the steps being taken in that regard.

51. As to the question whether any measures were contemplated with a view to abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, he said that current legislative thinking in India was that because the death sentence was rare and its execution even rarer, owing to the percentage of cases in which the President of India intervened and reduced the sentence to life imprisonment, capital punishment should not be abolished. The concepts of retribution and deterrence retained some currency in the legislature.

52. Mr. GUPTA (India), responding to the question on arrangements for supervision of places of detention and for investigation of complaints, said that under the Indian system each state had its own prison manual, under which district judges were required to make regular inspections of prisons. The National Human Rights Commission had been actively engaged in studying the question of prison conditions, and had urged that such inspections should be made more regularly. District magistrates were also required to make prison inspections.

53. It had been asked whether NGOs were also allowed access to jails. Although there was no specific legal provision to that effect, a number of states did permit non-official agencies to make visits to prisons and to report on conditions. In New Delhi, one NGO was conducting literacy classes for prisoners, and the National Institute for Mental Health was organizing courses for prisoners designed to overcome the trauma of incarceration.

54. Under the Protection of Human Rights Act (1993), the National Human Rights Commission had been specifically authorized to visit any jail or institution to study the living conditions of the inmates and to make recommendations: it had been doing so regularly. Following such visits, members of the Commission could summon the Inspector-General of Prisons of the state concerned and ask that immediate steps be taken to improve

conditions. The Commission had drafted a model law for prisons, and had written to the chief ministers of the various states requesting that resolutions be passed in their legislatures enabling the central Government to introduce a national Prisons Act. So far, the response of the state governments to that suggestion had been positive. In the meantime, the Commission was making every effort to accelerate the whole process of improving prison conditions.

55. Mr. KRISHAN SINGH (India) said that India was currently host to over 200,000 refugees. By and large, they were given the same treatment as nationals, and permitted to integrate with the majority if they so wished, provided only that they did not violate the law or engage in activities of a political nature. Over 8 million refugees had entered the country at the time of partition in 1947, and 10 million more had found asylum there in the early 1970s until an independent Bangladesh had come into being and they had been able to return voluntarily. The Government's policy in regard to refugees was based on political solutions, where feasible, reached through bilateral negotiations with the countries of origin.

56. Although India was not a signatory to the Convention relating to the Status of Refugees of 1951 or the Protocol of 1967, its attachment to humanitarian principles and its treatment of refugees had been exemplary. His Government attached great importance to the non-refoulement principle and to the voluntary return of refugees in safety and security.

57. Some 44,500 Tibetan refugees had been given help with rehabilitation through a number of agricultural and handicrafts development schemes, and they had also been provided with housing. There were between 90,000 and 100,000 Tamil refugees in Tamil Nadu, about half of whom were in camps: their repatriation had been on the basis of consultation with the Government of Sri Lanka. Approximately 51,000 Chakma and other tribal refugees, largely Buddhists and Hindus, were currently housed in six refugee camps in Tripura.

58. India had been engaged in bilateral discussions with Bangladesh in an effort to bring about the early and voluntary return of refugees to their homeland, and the first phase of repatriation had been completed by 7 April 1997, by which date 6,701 had returned.

59. Following an approach by the National Human Rights Commission, the Supreme Court had given directions to the state government of Arunachal Pradesh to ensure that the Chakmas who had been living there since the 1960s were not forcibly evicted. A high-level government committee had been set up to study the problem, and had urged the state government to expedite the process of granting citizenship to Chakmas who had applied for it.

60. Mr. DESAI (India), responding to question 13 on judicial independence and the right to a fair trial, said that judicial independence was ensured not only by the normal method of giving judges fixed tenure, but by a remarkable new system evolved by case law. Under article 123 of the Constitution, judges were appointed by the President in consultation with the Supreme Court. In a decision taken three years earlier the Supreme Court had come to the remarkable conclusion that it would have primacy in the making

of such appointments, and as a result judges of the higher courts could now only be appointed on the initiative of the Chief Justice of India. The system of having appointments made exclusively by the judges themselves almost completely eliminated any risk of political interference.

61. Concerning the situation in Kashmir, he said that a number of steps were being taken to provide security for judges in disturbed areas. It had been made clear to all security forces that human rights violations would not be condoned, and that allegations of torture and other abuses would be investigated and prosecutions initiated.

62. Referring to the question raised by Mr. Klein, he said that a series of directions had been issued by the Supreme Court on procedures to be followed at the time of arrest. Those directions had been given wide publicity, and any violation of them would constitute not only grounds for administrative action but also contempt of court. For example, senior officials of the Manipur State government had recently been sentenced to two months' imprisonment for failure to obey the Supreme Court's orders regarding a detainee.

63. The right to a speedy trial was recognized as a fundamental right by the courts, but it must be admitted that there was a gap between theory and practice since there were unfortunately considerable backlogs of cases awaiting trial. Two committees had recently been studying the problem, and had recommended that the process should be simplified by, for instance, allowing for only one appeal, introducing plea bargaining, creating magistrates' courts to deal with minor offences, and making use of modern technology such as computerization. The backlog of cases in the Supreme Court was now down to one year. In addition, there had been a number of instances in which courts had ordered the immediate release of prisoners when trials had been found to be unduly delayed.

64. Mr. KRISHAN SINGH (India), in reply to question 14 on propaganda for war or incitement to national, racial or religious hatred, said that the Indian Penal Code had specific provisions prohibiting the incitement of enmity between people on grounds of religion, race, place of birth, or language, as well as acts prejudicial to the maintenance of harmony, such as the desecration of places of worship. In addition, under the Representation of Peoples Act, the incitement of feelings of enmity on grounds of religion, race or language in connection with an election was made an offence. Associations whose activities were prejudicial to communal harmony could be declared unlawful for a period of two years: that had in fact been done in the case of five associations following the destruction of the Babri Masjid in Ayodhya in 1992. The Government's policy was to review the activities of such organizations every two years, and to extend the ban where required. It believed that banning was effective in stigmatizing the organizations concerned in the public mind.

65. India considered that tolerance and pluralism were essential to the survival of democracy and the enjoyment of human rights. As the Committee would be aware, Indian society was characterized by diversity, not only in the religious but also in the social sphere. The many minorities in the country were thriving, and their contributions to all aspects of life had

been increasing. He emphasized that tolerance was not a policy imposed by an elite, but was part of the culture of the people as a whole. Although manifestations of intolerance and bigotry did occur, they were aberrations, which were condemned not only by the authorities but by society at large.

66. His delegation was pleased to note that the Special Rapporteur had found the situation in India in regard to religious tolerance and non-discrimination to be satisfactory, but it believed that his argument that poverty and rigid social stratification led to religious intolerance was open to question. In fact, communal harmony normally prevailed among the poor and in rural areas, although it was true that the poor could more easily be exploited for political ends. A social revolution was in progress, and those who had previously been socially disadvantaged were increasingly making their voices heard and gaining political power. The caste system in no way involved discrimination on grounds of belief.

67. The Special Rapporteur had also drawn attention to the problem of misuse of religion for political ends, which could sometimes lead to religious intolerance. That problem could not be simply legislated away, but must be combated on the political front. The Special Rapporteur had commended the firm action taken by the Government against some manifestations of extremism, but had cautioned that such incidents could recur. India shared that concern, and was doing all it could to ensure that politics were not given a religious connotation in any part of the country.

68. His delegation did not underestimate the challenges posed by the existence of extremes of poverty and prosperity in India, and had taken note of the Rapporteur's recommendation that tolerance could best be fostered through universal education, encouraged by efforts on the part of the family, social and religious organizations, and the media. It agreed that accelerated economic development would reduce the danger of an increase in intolerance: that was precisely what the Government's economic reforms aimed to achieve.

69. The Special Rapporteur had also recommended that the Government should consider regulating the financial dependence of religious movements and political parties on foreign countries, as well as protecting schools from political and ideological indoctrination. Both those objectives were already part of government policy.

70. Responding to question 15 on the rights of persons belonging to minorities, he said that discrimination of any kind was prohibited under the Constitution. The National Minorities Commission played an important role in monitoring safeguards for minorities and investigating specific complaints. The Government had also taken a number of practical measures to ensure the effective enjoyment of rights by minorities by launching a multisectoral development plan, under which States were required to carry out surveys to identify the needs of minorities in their area. The plan included provision for technical education and for upgrading the skills of artisans. In addition, the Government had set up a National Minorities Development and Finance Corporation to promote economic development, for instance by providing loans to members of minorities for the setting-up of self-employment ventures. Twenty-two per cent of government posts were now reserved for the category

described as "other backward classes" which included many minority groups, and a special coaching scheme had been set up to prepare students from those groups for examinations for admission to government service.

71. Funds were being provided to help modernize religious schools through the introduction of science and mathematics teaching, and a programme had been introduced to improve the basic educational infrastructure for members of backward minorities. In addition to that programme, a special foundation had been established to create and equip residential schools for girls belonging to such groups.

72. By way of example, he said that the great diversity of population in the State of Manipur was a reflection of India's multi-ethnic, multi-religious, and multilingual character. The Meitis inhabited the plains, while the Kukis and Nagas, the largest among some 24 different tribes, were largely concentrated in the hills. The tribes spoke various Tibeto-Burmese dialects, and while the majority of those in the plains were Hindus, the majority of the hill people were Christians.

73. National religious minorities - Hindus, Christians, Sikhs and Buddhists - constituted roughly 41 per cent of the population of Manipur; they enjoyed the same rights as all other citizens under the Constitution and the laws. The entire State had been declared a scheduled area, which meant that the population was afforded special protection, particularly in matters such as transfer of land. The Meitis enjoyed the same benefits as those available to other backward classes. There was no restriction on NGO activity in that State, and there had been no instances of action against NGOs by the security forces there.

74. Mr. DESAI (India), referring to question 16 of the list of issues, said that India's Constitution had been framed at a time when the United Nations had recently adopted the Universal Declaration of Human Rights, which had greatly influenced its drafting. And the Protection of Human Rights Act (1993) reflected, inter alia, the rights recognized under the two International Covenants.

75. Mention had been made of problems relating to gender equality. In that regard, a great deal of radical legislation had been introduced or enacted. It should be kept in mind, however, that such issues were of great complexity in India; for example, some provisions might be regarded by certain minorities as a violation of their right to freedom of conscience. In that connection, probably no other national constitution gave minorities such political empowerment, but one of the problems stemming from that fact was that provisions such as the allocation of places in offices, educational establishments and elsewhere could lead to resentment about "reverse discrimination". Indian society faced many complex problems of that sort.

76. The provisions of the Covenant and other international instruments were being introduced increasingly through India's courts, especially by judge-made law. For example, although compensation was not an enforceable right for persons claiming to be victims of unlawful arrest, awards had been made, not on the basis of domestic law or because the Covenant's relevant provisions were self-executing but because such international provisions could be deemed

to provide a standard of what was fair, just and reasonable. In a recent case involving telephone-tapping, the court had ruled that, where the national law was silent, the provisions of customary international law applied. India had available a wide range of domestic mechanisms to investigate and prosecute human rights violations. It also cooperated in relevant international procedures such as the institution of special rapporteurs of the Commission on Human Rights. But India had abstained when the General Assembly had adopted the resolution which established the Optional Protocol to the Covenant, and its position in that regard remained unchanged.

77. Mr. KRISHAN SINGH (India), referring to question 17 of the list of issues, said that information on the Covenant's provisions, as reflected in the Constitution, had been published in the country's 18 official languages, and formed part of the school curriculum. The Department of Education had initiated measures to promote human rights education; examples were the preparation of a teaching handbook on human rights by the National Council for Educational Research and Training, and the provision of modules for use in teacher-training. Such material was already available in Hindi and was being translated into the other languages. All state and Union Territory authorities, and all schools administered by the central Government, had been instructed to observe 10 December as Human Rights Day. The University Grants Commission had recognized 10 universities for the introduction of courses on human rights, a grant of 7.2 million rupees having been made available for that purpose. The Indira Gandhi National Open University had set up special facilities for human rights teaching by means of tele-education modes. The Covenant's provisions were a major topic in many seminars, discussions and workshops, and the National Human Rights Commission had initiated measures to promote awareness of the Covenant among all sectors of society. India's third periodic report, and the Committee's deliberations thereon, would be published, and the Committee's concluding observations would be made available to the Commission. The Indian authorities had already begun the practice of consulting NGOs and independent experts on the preparation of reports to be submitted under the international instruments to which India was a party. The Government had also involved NGOs in its preparations for participating in the Fourth World Conference on Women, and in general attached the highest importance to involving all sectors of society in efforts to promote and protect human rights.

78. The CHAIRMAN noted that the Indian delegation had thus concluded its responses to the Committee's questions concerning part II of the list of issues, and invited the members of the Committee to put to the delegation any further questions they might have.

79. Mr. YALDEN, referring to question 15 of the list of issues, said he regretted that the Committee had received no information relating to the rights of persons belonging to minorities in the light of the provisions of article 26 of the Covenant. It had been informed that a National Commission for Minorities had been established and could hear specific complaints; but it would be useful to know, for example, the number and nature of complaints received. A copy of that body's report to Parliament would also be welcome. It was evident from the delegation's very thorough responses to the Committee's questions and comments that India did not lack suitable institutions and procedures, but there was clearly a serious problem

of enforcement. With regard to the millions of children still illegally employed, for example, the National Human Rights Commission had said that there had been conspicuously few prosecutions, and lamentably fewer convictions, under the Child Labour (Prohibition and Regulation) Act (1986). Doubtless the task of long-term economic and social development was enormous; in the meantime, however, the law already enacted must be enforced, and he hoped that the Government would take the speediest and most effective steps possible in that regard. Lastly, the distribution of pamphlets, handbooks and so forth would not suffice to ensure thorough dissemination of information on the rights recognized in the Covenant; to raise the public awareness called for persistent, dedicated action. He reiterated his thanks to the Indian delegation and wished the Indian authorities well in their continued efforts.

80. Lord COLVILLE endorsed Mr. Yalden's thanks and good wishes to the Indian delegation. With regard to question 12 on the list of issues, he understood that, in 1995 and 1996, a number of Chin refugees had arrived in the north-east from Myanmar but had been returned to that country, an action which seemed at variance with the policy of non-refoulement. He understood that UNHCR had been involved to some extent, but wondered whether the latter's access to the refugees had been inhibited in any way by the provisions of the Protected Area Order (1958).

81. His main comment was that, although India's reliance on the work of Parliament and the courts was commendable, the credibility which was an all-important aspect of measures to promote and protect human rights would be eroded unless measures were implemented speedily; he referred particularly to the National Human Rights Commission's recommendations in that regard. The adoption of plea-bargaining, which had been mentioned, could be a dangerous course and should be approached very carefully, as it could lead to feelings of gross injustice on the part of victims and a consequent loss of respect for the courts. Likewise, care should be taken with release on bail when there was to be no early trial; experience in the United Kingdom, in civil and criminal courts, had shown that litigants and defendants were often thereby able to delay proceedings deliberately. The current procedure was to require the judges themselves to keep an eye on their timetable in criminal cases, and a similar procedure was to be introduced in the civil courts.

82. Mention had been made of the growing use of the National Commission for Scheduled Castes and Tribes; again, however, speedy action on complaints was essential to credibility. The Government apparently took the view that the subject was not fully within the purview of the International Convention on the Elimination of All Forms of Racial Discrimination. He would be interested to know, therefore, the Government's response to the proposal, by the Special Rapporteur on questions of racial discrimination of the Commission on Human Rights, that a field mission should be undertaken to India on the subject of the "untouchables". India's cooperation in that regard could result in information on the subject becoming available much earlier than India's next periodic report to the Committee.

83. Mr. TÜRK said that he, too, greatly appreciated India's third periodic report and the further information provided by the delegation. The first part of the report, which inter alia reviewed events since submission of the previous report, contained a useful format which other reporting States

parties could perhaps copy. With regard to question 17 of the list of issues, he felt that the measures should include the widest possible dissemination of the audio-visual record of the current presentation and discussion of the report. He welcomed the information about efforts to produce further legislation on freedom of information, but hoped that the greatest efforts would be made, even before such legislation was passed, to render government activities as transparent as possible. One reason why such transparency was important stemmed from problems in implementing the provisions of article 9 of the Covenant. In that regard, India's declaration, on its accession to the Covenant, insisted that article 9 should be consonant with the Constitution. As he saw it, however, article 9 could not thereby be deemed inapplicable, and the Committee should insist on a restrictive application of the declaration and of article 9.

84. Although there was no formal state of emergency anywhere in India, some laws and practices seemed to be a de facto derogation from article 9. A great deal of information from NGOs supported that impression, as well as the statement attributed to the then Minister for Internal Security on 28 August 1994, to the effect that, out of some 70,000 persons in detention, only 8,000 had been brought to trial, and that the conviction rate was less than 0.05 per cent. The Committee could appreciate the difficulties that had been described; nevertheless, statistics of that magnitude could not but give rise to concern.

85. With regard to question 13, the Committee had been informed of measures to ensure the independence and safety of judges, but nothing had been said about protection for lawyers and human rights activists. Lastly, he was disturbed by the National Human Rights Commission's concern, voiced in its report, about the problem of hostility and violence, at times deeply rooted but at others engineered, and its grave repercussions on respect for human rights.

The meeting rose at 1 p.m.